Pol. Pam. Publ. vol. 160

THOUGHTS

ON THE

ENGLISH GOVERNMENT;

LETTER THE THIRD.

K. with 103. e. 52

Thoughts on the Engliſh Government.

ADDRESSED TO THE

QUIET GOOD SENSE

OF THE

PEOPLE OF ENGLAND.

IN A SERIES OF LETTERS.

LETTER THE THIRD.

Character of Mr. Wooddeson—Reply to his Brief Vindication—His Manx Halfpenny—Description of a Lawyer's Argument—Mr. W. Suppresses two passages of the Attorney-General's Speech—The Form of Proceedings in Council—Mr. W. mutilates a passage from Hale—Form of Prayer for the High Court of Parliament—Mr. W. is reproved—Of Tellurian Politicians—Expostulation with Mr. W. on the manner of his Brief Vindication—Reasons that induced the Author to write these Thoughts on the English Government—His reason for being a little severe with Mr. W.—Encomium on Mr. Whitaker's origin of Government.

It is the settled Constitution of the Kingdom, that fixeth, and defineth, where the Legislative Power is lodged, not notions and fancies.

Hale's Judicature of the Lords. Page 11.

LONDON.

PRINTED FOR J. WRIGHT, OPPOSITE OLD BOND STREET, PICCADILLY.

BY J. DOWNES, 240, STRAND.

1799.

TO THE

QUIET GOOD SENSE

OF THE

PEOPLE OF ENGLAND.

November 25, 1799.

IN my last letter, I remarked to you, that with all the clamour raised against me, and after several pamphlets written in support of my doctrines, no one had come forward in print to question and controvert my first letter. I did not think I should, so soon, have occasion to acquaint you with a publication, that has at last appeared in answer to my second letter. It comes from the pen of Mr. WOODDESON, many years Vinerian Professor in the University of Oxford; and it is intitled, "A Brief Vindication of the Rights of the British Legislature."

THE Remarks I had made upon some doctrines contained in his "Law Lectures," and upon his method of arranging some of his leading heads, have induced him to take up his pen, for vindicating both his doctrines and arrangement; and at the same time, maintaining, what he calls, the rights of the legislature, as if they were injured by certain discussions in my last letter.

The value of this gentleman's labors as a Lecturer, the utility of his Lectures since they have been printed, and his most excellent personal character, both in public and in private, are acknowledged by all the profession. The Error I have taken the liberty to notice in his work, is not peculiar to him, but is also in Blackstone; and, in truth, it is entertained by them, only in common with many other persons of considerable information and parts; but it is still an Error, and ought to be corrected. It was with that view, I made the remark in my last letter; but Mr. Wooddeson has entered into a defence of what he had written, instead of an examination of its justness; and, preferring rather to take the part of an Advocate, than that of a Lecturer, he has set himself obstinately to defend

defend what no mortal man can justify, though it has passed so long in the world as sound and correct; for, like many other vulgar errors, it has only been current, because it never was properly examined and exposed. The defence of himself, and the attack upon my second letter, constitute one and the same argument, and are accordingly of a piece with the weakness of his cause. This first assault I have found to be *telum imbelle sine ictu*, not, I am willing to think, for want of vigor in the arm, but only of strength in the lance. Out of equivocal dictums, general expressions, mutilated passages, and irrelevant authorities, who can compose a sound and effective argument! Such is the tenor of Mr. Wooddeson's Vindication; we should compassion a respectable Lawyer, struggling, in this disheartening manner, for a lost cause, if he had not unnecessarily thrust himself into it. As it is, he must e'en stand the brunt of the Scuffle; I shall be obliged sometimes, not only to censure his matter, but to reprove him for his manner, as you will see by the following Letter.

To

TO

RICHARD WOODDESON, Esq.

&c. &c. &c.

SIR,

I was surprised to find, the short observations I had presumed to make upon your valuable "Law Lectures," in my second letter, could be thought worthy the notice, you have been pleased to take of them in your late publication, intitled "A Brief Vindication of the Rights of the British Legislature." All that I have said is contained in the following passages in two notes. Complaining that it was a defect of method in certain Law Treatises, to begin by speaking first of the Parliament, and then going on to the King, I added, *I find this fault in Blackstone, Wooddeson, and others. A departure from principle will ever lead into embarrassment.* Page 78. again, in another place; *I have before noticed that Mr. Professor Wooddeson has followed his predecessor, both in doctrine and arrangement; it may be hoped however, for the honor of English Jurisprudence, that*

that he will reform these to the purity of the Ancient School, for which he has the authority of his cotemporary, the Attorney-General; and thus remove the only blemish, I know, in his most excellent Lectures. Page 185.

I place these passages at length, because you have not done so; and I think, I perceive, a good reason for it. If your reader had seen, that I had called upon you to conform to the doctrine of the Attorney-General, he would have been startled, when he came to *Sect.* 5, where you quote the Attorney-General as the strongest of your authorities against me; and he would, probably, then turn to my letter for satisfaction, where he would discover the suppression, (pardon the term) upon which I shall have more to say presently.

You begin by finding fault with my Title Page. "The letter was improperly addressed; it should have been to the people of Great Britain; since the Union we are one kingdom, one people, as to the general affairs of Government, and the people of Scotland, have as much right to exercise *their quiet good sense*, as those of

" England." (* *Sect.* 1.) This grave claim for our fellow subjects of Scotland, I do not mean to question; but I do deny, that it laid any obligation on me to address my letter as well to them, as to our countrymen of England. You had something floating in your mind, which you have not plainly expressed, but I will give you my reason distinctly—Tho' we are " one kingdom and one people, " as to the general affairs of Government," yet that Government is not British, but English; It is of English birth, English education, English growth; at the Union the Scotch came into the bosom of this Government, and Scotland might, perhaps, in this view, be ſaid rather to be united to England, than England to Scotland. Therefore, although the Government is *de facto* Britiſh, yet, it is in theory wholly Engliſh; and, conſidering I meant to diſcuſs it only in theory, as to its true nature and origin, I thought it would be proper to call it *Engliſh*, and to addreſs my thoughts to the people of England only.

You know, Sir, that it has been laid down in our Courts, and recogniſed of late years, by my Lord Mansfield, that if a body of Britiſh ſubjects ſettle in an uninhabited country, and

* I quote Mr. Wooddeson's Vindication by Sections, my Letter by Pages.

there colonize, they carry with them "on their backs" the law of England. Now I ſhall be obliged to you, if you will give me the reaſon, why, being Britiſh ſubjects, they do not carry with them the law of Scotland, as well as the law of England; and further, if they are all Scotchmen, why they carry the law of England with them, inſtead of the law of Scotland. Colonization is ſurely an Imperial concern, and not a municipal one; It is a part, if any thing is, of what you call "the general affairs of "government" and yet you ſee the municipal law of England has, in this inſtance, an aſcendency over the Municipal law of Scotland, and becomes the Imperial law of the Britiſh Government, wherever Britiſh ſubjects may ſettle themſelves, ſo as to be under its protection. I beg of you, Sir, to ſtudy this queſtion, and then anſwer me, whether our *government* is not thoroughly Engliſh.

Such is the defence of my Title Page; I will now make ſome obſervations upon yours. "A Brief Vindication of the Rights of the "Britiſh Legiſlature." The term "Britiſh" was, no doubt, introduced here to decide, at once, the impropriety of my "Engliſh;" but what is the ſenſe of Legiſlature? for you know,

it is uſed by all of us, and repeatedly in your letter, in more ſenſes than one. Do you mean the whole parliament, or only the two houſes? Judging from your context, I ſhould ſuppoſe you meant the former; for I ſee, you have placed in your title, as a motto, the old quotation from Cicero, *Statuo eſſe optimè conſtitutam rempublicam, quæ tribus illis, regali, optimo, et populari confuſa modicè, &c.* Taking this as an interpretation of your meaning in the term "Legiſlature," I beg to aſk you, what need there is for you to vindicate the rights of the Britiſh Legiſlature againſt any thing I have ſaid? Have I denied them, have I transferred them to any other hands? You know, that ſuch an imputation is without foundation. If by legiſlature you mean the two houſes; I muſt firſt complain of your miſleading us with your motto; and then of uſing, at all, a word ſo ambiguous, when there were preciſe ones at hand: but if this is your meaning, I muſt again aſk you, what rights of theirs are propoſed to be transferred to other hands? They remain exactly as they were, without your Vindication: I ſhould remind you, that, as to the title of Legiſlators, I have in my Letter (page 64) vindicated them in the poſſeſſion of it, by arguments and conſiderations, that have not occurred

curred to your predeceſſor Mr. Juſtice Blackſtone, or yourſelf; who, with all your vindication, do not ſeem to know what Legiſlators and Legiſlatures really are; namely, that they are the *propounders* of Laws, and not the *makers* of them.

Indeed, Sir, I believe you meant the two houſes, and you thought, no doubt, by this catching title, to gain on your ſide the Lords, and Gentlemen at Weſtminster, who ſit in the preſent parliament; ſome of whom, perhaps, are among thoſe, who in the former parliament had haſtily condemned my firſt Letter; and might be conſidered as committed for a general condemnation of all my writings. But, I hope, and believe, the preſent houſe will not make ſuch a mistake, as their predeceſſors. I am perſuaded, after what has paſſed, they will think ſuch a subject is in better hands, when mooted between two Lawyers. Do not, therefore, deceive yourſelf; you will, I promiſe you, have to fight this battle for the *Lectures*, and for the *Legiſlature* by yourſelf; let us, however, begin before we are interrupted, and while I am permitted to combat upon equal terms.

The

The exception I had ventured to take to your *doctrine* and *arrangement*, you anſwer in *ſect.* 3. 4. 5. of your "Brief Vindication;" In which I muſt complain, that you uſe the words *Legiſlature*, and *Legiſlators*, in more than one ſenſe, and intitle yourſelf, by ſuch means, to make concluſions, either way, as ſuits your purpoſe. Where Blackſtone is quoted, (*ſect.* 3.) "Legiſlature is the greateſt act of ſuperiority, "that can be exerciſed by one being over another," you muſt certainly mean ſuch a Legiſlature as reſides in King, Lords, and Commons. So again, "by the Sovereign Power is meant "the making of Laws;" but where you quote your own Elements, "It is not neceſſary, that "Legiſlators ſhould be conſtantly aſſembled," you meant the Lords and Commons only, (*ſect.* 4.) as is clear both from the paſſage itſelf, and the purpoſe for which you quote it. In the ſame ſection, you tell me, "I ſeem to "object againſt the legiſlature being conſidered "as the Supreme Power, becauſe the functions "of the King are permanent, thoſe of the "Lords and Commons occaſional and tempo-"rary;" in which poſition, by the way, you totally miſunderſtand me; but here, by legiſlature, you mean the two houſes.

From

From theſe Inſtances, it is plain how little you regard preciſion in the uſe of terms, and how little chance, under ſuch diſadvantage, you give us of getting at preciſe ideas.

But, Sir, independent of this, you do not ſeem to comprehend the nature of my objection to your *doctrine* and *arrangement*. The Legiſlature, or to uſe a more preciſe term, "the making of Laws" may be the ſupreme power in the State, and yet your doctrine of the Legiſlature (if you mean the two houſes) being the ſupreme Power, may be wrong; becauſe, I ſay, the King, and not the two houſes, makes the Law. Again, although I ſhould concede, that the Supreme Power ought to be firſt mentioned, in all methodical treatiſes, yet your arrangement in placing firſt the Parliament, by which you mean the two houſes, may ſtill be wrong. And, therefore, it does not appear to me, you have anſwered my objection, by all your quotations from your own Lectures, and from Blackſtone, to ſhew the exalted degree of ſovereignty, or the pre-eminent nature of that branch of it, which conſiſts in making laws. I diſpute neither of theſe as general poſitions; but I will, with your leave, juſt remark upon what I have conſidered, as a weak argument for this pre-eminence, uſed by other writers, and

now

now urged more than once by yourſelf. You ſay, (*Sect.* 3.) from Blackſtone "To ordain, is "evidently an exertion of more eminent do- "minion, than to expedite things ordained." Again, *ſect.* 5. "The executive power, which "I have juſt ſhewn ſect. 3. (viz. from Black- "ſtone) to be of a ſecondary quality or na- "ture, &c.—The law muſt be ordained before it "can be carried into execution." This I ſay, is a weak argument to maintain your point, though I know it paſſes current; but this is one of the things that has ſo paſſed, only for want of examination. This argument proceeds upon a ſuppoſition, that nothing is done by the executive, but what has firſt been preſcribed by the Legiſlative; which is totally untrue; for the whole body of unwritten Law has its origin and validity from cuſtom; by much the greater part of the functions of the executive government have no other authority than the inherent power of the Crown, for their exerciſe; The Offices of the Miniſters of State; The Treaſury, Admiralty; Fleets, Armies, Colonies; Coin, and many other branches of the Government, may indeed, occaſionally have come under the conſideration of parliament, and received certain directions from Legiſlative Acts in particular inſtances; but to declare of all theſe great

great functions of government, that nothing can be executed reſpecting them, that has not been ordained in parliament, is too much contrary to experience, and too abſurd to be contended.

And yet the poſition itſelf is a good one, if properly applied; In all the above matters, the King, moſt certainly, *ordains* in due form and manner, before he orders any thing to be executed. In the affair of coin, for example, he is, to uſe the common phraſe, his own Legiſlator; that is, as I would expreſs it, he acts without the advice of his parliament, but with the advice of his Privy Council, the Lords of his Treaſury, and others, who are the adviſers aſſigned him by the Law and Conſtitution, in this particular caſe. But theſe offices are conſtitutional organs of the Government, which wholly eſcape the notice of gentlemen, who talk as you and Blackſtone have, and who are ſo blinded with the dazzle you have made about parliament, that you write, as if you thought, there was nothing elſe in the ſtate, that had in it the quality to deliberate, conclude, and adviſe; and it is laid down by ſome of you broadly, as I have cenſured Blackſtone for doing, that "the Executive conſiſts of the King *alone*" (page 182.) and in ſuch a ſolitary condition

of royalty, it would indeed, I agree with you, be very proper, that he ſhould execute nothing, but what was ordained by ſome other authority. Thoſe however, who read you and Blackſtone, ſhould be informed, that the King does, in his Privy Council and in his various offices, order many things, which have the binding force of legiſlative Acts, and which are accordingly carried into execution; ſo that by our Conſtitution, there is a power of ordaining Laws without the intervention of parliament, which is controlable only by the Supreme Legiſlature exerciſed in parliament, whenever it chuſes to interpoſe.

Going on with the vindicating of your arrangement, you think you do it, in the following words; "As to my *arrangement*, the charge "is, not ſtrictly juſt. For I begin my account "of the parliament with the King in his Legiſ- "lative Capacity, and as *one of the conſtituent* "*parts*, and then proceed to the *other members* "of the Legiſlature" (*Sect* 5.) I have printed this paſſage with your own *Italics*, that it may loſe none of its intended ſignificance. Legiſlature is uſed here in the other of your Senſes, namely, for the whole parliament. As you denominate the King *one of the conſtituent parts*, and then

then proceed to the *other members*, as you call them, you mean to ſay, the King alſo is a Member; that is, there are three members without head or body, like the figure on a Manx halfpenny. There is no teaching authors by example, or I ſhould have thought, after my fate, they would at leaſt have guarded themſelves from any metaphorical imaginations, that were wholly new; the three branches were a piece of nonſenſe, that might have ſerved your turn, and ſo many have ſanctioned it, you might be ſure you would neither be laughed at, or proſecuted for uſing it; but this conceit of a Harlequin polypus, that introduces no better illuſtration, and expoſes you to all the hazard attending novelty, without any particular advantage whatſoever, is a flouriſh of compoſition, not very diſcreet, to ſay nothing worſe of it.

The poſition that the King is only *Unus inter alios*, is what you mean to lay down by this metaphor of members, and you tell us indeed, plainly, in another place, that he is only co-ordinate in legiſlation; and you go on to alledge ſome authorities which you think ſupport this poſition, becauſe they happen to have the words—conſiſt—conſiſting—conſtituent part—

a part

a part of—his ſhare in the legiſlative power—component part—and the like. You cite many ſuch expreſſions in the ſubſequent parts of your Letter, upon which you place almoſt your ſole reliance; I ſhall hereafter have, to give you my opinion upon the value of ſuch Authorities; but I muſt firſt notice the few words, you have cited from the late Attorney General, and then make the obſervation I promiſed, upon the *ſuppreſſion* before complained of.

The paſſage in your letter ſtands thus. "So "ſays the late Attorney General," as cited in the letter page 58.) "The King has preroga-"tives *as a* CONSTITUENT PART *of the Legiſla-"ture*, though the laſt paſſage ſeems to have "diſconcerted the Letter-writer (ſee ibid) as "well it might, for this aſſertion alone of that "great Lawyer, confirms all, that is contend-"ed for, on my ſide, in this whole argument. "Can higher authority be alledged?" This paſſage from the Attorney-General, ought to convey ſomething valuable, to deſerve the high encomium beſtowed by you, not only on *it*, but on its Author; though I think "aſſertion" was a denomination not well choſen for your purpoſe, as it more commonly implies ſome

peremptory declaration, without regard to its being duly weighed, or ſupported; I, however, who, with all my deference to its author, think ſuch to be the real character of the paſſage, approve of the term, you apply to it.

Perſons who have only read your letter will be ſurpriſed, when they are told, that the Attorney-General's ſpeech in Hardy's caſe, a part of which you here ſo triumphantly cite, as deciſive on your ſide of the Queſtion, is adduced by me in other parts of it, as deciſive on my ſide.

Obſerve how this matter ſtands. The Attorney-General, in two long and very marked paſſages, is my deciſive authority; in one ſentence not marked, nor containing twelve words, he is your authority; you quote this latter againſt me, without any notice of the paſſages which are againſt you. This procedure muſt appear ſingular amongſt perſons, who have any idea of fair reaſoning; it is only among Lawyers that ſuch ſpecies of argumentation is practiſed, and allowed. They know, how the books are ranſacked when an argument is to be made; how they cheriſh any *dictum*, any *arguendo* allegation, any expreſſions, that can be poached out of an obſcure

obſcure corner, and ſtrung together with ſome plauſible appearance of aptneſs; no matter what is the context, what the occaſion, whether *eodem intuitu*, whether upon the point in judgment, or only incidental; it is ſufficient for the day, that *litera ſcripta* can be alledged for it; and it is left to thoſe who have the labor of deciſion, to extricate themſelves from the oppoſing authorities of Croke James, and Croke Charles, as they can. It ſeems to me, that you, my dear Sir, have produced nothing in vindication of the *Lectures*, and of the *Legiſlature*, but a Weſtminſter Hall argument of the above deſcription. My friends of the bar will not, I am ſure, take offence at this character of their efforts in forlorn caſes; We muſt, from the nature of our profeſſion, be ſometimes on the wrong ſide; and the wrong ſide muſt be defended by an advocate, as well as the right; which can ſcarcely be done, but in the way I have above ſuppoſed. You, Sir, were not under the ſame obligation. You might have reconſidered your ſubject, and profited by my hint; it was with that view, I gave the ſuggeſtion both to you, and to Mr. CHRISTIAN; but you have choſen to defend rather than to diſcuſs, to be an Advocate rather than a Lecturer; and you have been accordingly driven to

to a mere Weſtminſter Hall argument of the worſt ſort.

I beg you, Sir, to conſider for a moment, the different methods of proceeding, obſerved by you, and by me. In my ſecond letter, I have entered into a full examination of the notions entertained by yourſelf, and by others; and I have ventured, after weighing the reaſons *pro* and *con*, to ſubmit, that the language in common uſe for deſcribing, or ſpeaking of our Conſtitution, is deficient in aptneſs and preciſion; and that certain ill-concieved phraſes have miſled uninformed perſons into wrong notions of our Government, both in its form and its operations. I have then proceeded to ſtate my own principles, and I have ſupported them by reaſonings from analogy, and by authorities from Law-books, records, and hiſtory; this is done at ſome length, and with an attempt at full diſcuſſion. What do you oppoſe to all this? Without anſwering, or at all entering into any one of my reaſonings; neither denying, or examining the principles I go upon, you offer nothing but a ſtring of quotations, containing the very phraſes, and modes of expreſſion, which I had reviewed in the courſe of my inquiry, and which I had condemned, as the

the very cauſes of the errors I was combating. Again, The authorities I relied upon, were ſelect and appropriate, being ſuch as clearly, and unequivocally ſupported the principles laid down by me: among the refuſe of authorities which I condemned, partly becauſe they were the very ones I meant to cenſure, and partly becauſe they were equivocal, and might prove your point as well as mine, theſe you have brought in array againſt me, though volumes of words, ſo inapplicable and inefficient cannot, in point of argument, do either harm to me, or ſervice to you.

My reaſon for thus maintaining the credit of my own authorities, while I diſcredit yours with ſo little ſcruple, is plainly this.

The queſtion between us, is not, what are the conſtituent parts of the parliament; It is known by every body without the aſſiſtance of Coke or Hale, that it conſiſts of King, Lords and Commons. That being agreed, the queſtion between us, is ſimply this; in what manner, and under what character and denomination theſe three parties concur in completing a legiſlative act; whether they are all equal, or whether one is ſuperior to the reſt. Now the

the authorities I have adduced, do expreſſly, and diſtinctly, eſtabliſh what I have contended for, namely, that the King is the maker of the law, and the Houſes are the adviſers only. Your authorities, without containing any thing expreſs, or diſtinct upon the point in queſtion, convey, generally, a notion that the three parties muſt join in a Legiſlative act; and then you found upon this, a concluſion, which is merely your own, that they act co-ordinately. One expreſs and diſtinct authority like mine will, therefore, countervail the whole of yours, of the above equivocal deſcription; and its force cannot be combated but by one, which expreſſly and diſtinctly negatives in terms, the ſuperiority of one of the parties in a legiſlative act; which is not done, I aver, by any of your citations notwithſtanding you ſo rely upon them; your authorities are all of them beſide the queſtion, and inſtead of invalidating, or croſſing, may conſiſt very well with mine, as far as incorrect expreſſions may conſiſt with thoſe, that are correct.

To exemplify this in the ſpeech of the Attorney-General in Hardy's caſe, where, I muſt repeat, you have availed yourſelf of a *ſuppreſſion*, that gives you too much *temporary* ad-

 vantage.

vantage.—In page 56, of my letter, I have quoted the following very expreſs and diſtinct declaration of the form of our Government, "*The power of the State, by which I mean the power* "*of making Laws, and enforcing the execution of* "*them when made, is veſted in the King; enacting* "*laws in the one caſe, that is, in his legiſlative cha-* "*racter, by and with the advice and conſent of the* "*Lords ſpiritual and temporal, and of the Commons* "*in parliament aſſembled; aſſembled according to* "*Law, and the conſtitutional Cuſtom of England;** "*in the other caſe executing the Laws when made,* "*in ſubſervience to the Laws ſo made, and with* "*the advice which the Law and Conſtitution hath* "*aſſigned, in almoſt every inſtance, in which it has* "*called upon him to act for the benefit of his* "*Subjects.*"

In another paſſage, he repeats this ſame idea ſhortly, page 59. "*Him, in whom the Supreme* "*Power, Rule, and Government, under Conſtitu-* "*tional checks and limitations is veſted, and by* "*whom, with conſent and advice in ſome caſes, and* "*with advice in all caſes, the exerciſe of this* "*Conſtitutional Power is to be carried on.*" With theſe

* *Note*, It is not Great Britain, but England; see what I have said before, in pages 10, 11.

theſe emphatic words, he winds up his clear and ample ſtatement of the form and operations of our Government.

Theſe two paſſages are quoted by me, in a conſpicuous manner in *Italics*, and I have declared them to be the authorities, which I conſidered as the moſt explicit, and moſt deciſive to eſtabliſh my theory, (pa. 56. 57. 59.) I cannot help repeating, that as you quote only from my letter, it looks like a ſuppreſſion, of a very particular ſort, to paſs unnoticed paſſages ſo long ſo ample, and ſo marked; and to content yourſelf with picking out a few equivocal words, interpoſed between thoſe two paſſages; and which make no figure at all in the main diſquiſition, neither of the Attorney-General, or myſelf; the words are "In domeſtic concerns "he has prerogatives as a conſtituent part of the "Supreme Legiſlature;" I cannot conceive how any fair and impartial reader, ſhould paſs over the two diſtinguiſhed paſſages, juſt quoted, without notice, and then lay ſuch great ſtreſs upon theſe few equivocal words, that have no preciſe meaning at all, as to the queſtion between you and me. If you ſay, that it was not your buſineſs to adduce what did not make for you, this is a confeſſion, that my diſquiſition

has been a fair examination, in which I have plainly ſtated all authorities on both ſides, for the diſcovery of truth; but that yours is a mere advocate's argument, to maintain a particular intereſt, without any regard whatever to the real truth and juſtice between the parties.

As to the paſſage itſelf, in the Attorney General's ſpeech, it is only another inſtance, among many, that conſiderable Lawyers ſometimes ſpeak with more, ſometimes with leſs, preciſion on the ſame ſubject; and yet, in this particular caſe, it is not wholly the Attorney General's fault, that in theſe few words, he deviated from himſelf. If he had adhered to his own juſt way of thinking and ſpeaking, this paſſage would never have appeared; but it ſeems, he turned to Blackſtone, to find every thing, that could be adduced to charge, as highly as poſſible, the picture he was drawing of the Royal authority in all its ſupremacy; and there he found theſe very words "Firſt, he is a Conſtituent part of the Supreme Legiſlative power."* In the ſame place he found alſo, ſome other exceptionable expreſſions, which he has introduced into the context of this paſſage. Thus it is, that your predeceſſor and you, being authors

* Commentaries, Title, Prerogative.

authors of eſtabliſhed authority, may miſlead others among us than mere Students.

You ſay, (*ſect.* 5.) that this equivocal paſſage "ſeems to have diſconcerted me." I cannot comprehend what you mean by this; ſo far from being diſconcerted, I had marked it with a ſhort note of cenſure, at the bottom of the page, as inconſiſtent with the better ſentiments, more diſtinctly delivered by the Attorney-General, both before, and after it; but when I have cenſured the whole of your letter, you may ſtill, perhaps, maintain, that I am diſconcerted with your animadverſions.

What I have here ſaid of the paſſage from the Attorney-General (whom you panegyriſe when he is wrong, and I praiſe when he is right) may ſerve as a Reply to all the authorities cited by you from Hale and others; they are all of them only equivocal phraſes, and general expreſſions, that are ſomething, perhaps, by themſelves, but are nothing when contraſted and compared with paſſages, where the ſame author ſets himſelf to be peculiarly exact; where he is performing an analyſis, ſuch as we are now making, to diſcover particulars, that are not contained in, or touched by general expreſſions

preſſions. All the authorities I adduce, are, I maintain, of the latter deſcription; to which authorities, however, you do not condeſcend to anſwer one word. I am content that our argument ſhould be conducted as it hitherto has been; I reſign to you not only the looſe expreſſions of the Attorney-General, which you prefer to his moſt approved preciſion, but every thing of the ſame ſort, that can be found in Coke, in Hale, in the parliamentary Records, antient Statutes, or whatever other document you may be able to bring to light.

Indeed, you have (in *ſect.* 7. 8. 9.) brought together, and marſhalled againſt me, a number of ill-penned, antient ſtatutes, which I had not paſſed unnoticed in my letter, but had ſtated generally, and admitted to be authorities againſt me. There does not ſeem much force in your reviving and preſſing upon me all theſe; but you ſhould rather I think, have confined yourſelf to my concluſion, founded on the uniform wording in the enacting part of ſtatutes, which has invariably prevailed ſince the Reſtoration; the concluſion from which uniformity, cannot, as I conceive, be ſhaken by any inſtances of informal wording in earlier times. It is nothing to our purpoſe whether

per

per aſſenſum parliamenti, or *authoritate parliamenti*, are ſufficient words of themſelves for enacting ſtatutes, without mentioning the conſtituent parts of the Legiſlature, as you tell us; (*ſect.* 9.) or whether, when they did name the conſtituent parts, ſtatutes were ſaid, at one time, to be enacted by the King, Lords, and Commons; at another time, in ſome other form: but the queſtion is this; whether from the reſtoration to the preſent time, ſtatutes do not expreſs the concurrence of the three parties, in ſuch a manner, as to demonſtrate, that the King is the enacting party, and the Lords and Commons the adviſers and conſentors.

You cannot deny that this ſpecification is conſtantly obſerved in every Statute at the preſent day; but you endeavour to avoid the force of it (*ſect.* 7.) by the conſtruction you put on the concluding part of the enacting words, "And by the authority of the ſame;" but here again, you ſeem to lay more ſtreſs upon general words, not very obvious in their ſignification, than upon the ſpecific and plain words, *be it enacted by the King, by and with the advice and conſent of the Lords ſpiritual and temporal, and the Commons in this preſent parliament aſſembled.* To prefer obſcurity to light, as you thus do, ſeems

ſeems not, I muſt ſay, the moſt promiſing way to find truth; I do not think you mend the matter by the ſenſe you give to theſe general words; you ſay, "and by authority of the ſame" muſt mean, the *ſame* parliament, becauſe parliament is the laſt antecedent. I ſhould humbly ſubmit (if it is neceſſary in ſuch matters to be ſtrictly grammatical) that parliament is not the laſt antecedent; for according to my notion, the laſt antecedent is, the thing done, and the mode of doing it, which is the King's *enacting*, and the Lords and Commons *aſſenting*. If it were Latin, and you could ſhew a record that runs *authoritate ejuſdem*, and not *eorundem*, you might perhaps, with more color, contend, that this form is intended as tantamount to the old words *authoritate parliamenti*; but, in any of these caſes, I acknowledge no weight in the words, as I before ſaid, becauſe general terms cannot be allowed to take away, or controul the force of ſpecial ones, which ſo plainly declare that the King *enacts* with the *advice* and *conſent* of the Lords and Commons. Such a conſtruction, you will permit me to maintain, is wholly adverſe to the diſcovery of a true meaning in any written paper whatever, and was never tolerated, I am ſure, as a method of inveſtigation, either

either in the Schools, or the Courts. The Attorney-General in his ſtatement of the enacting words, has not given theſe, on which you lay ſo much ſtreſs; conſidering them, no doubt, as of no weight in his illuſtration, either becauſe they appeared to him to have no preciſe meaning, or becauſe they had the meaning I before ſuppoſed, but expreſſing it leſs preciſely, than the previous words of enacting, they were, therefore, in his judgement, ſuperfluous, and unneceſſary.

The ſum of what you contend for, is this, that to aſſent, is the ſame as to enact, and to enact is the ſame as to aſſent; and if that is your opinion, you muſt, of courſe, condemn the framers of our parliamentary forms, for making any diſtinction, where there was no difference. But this and more may be attempted by an author who is reſolved, at all hazards, to maintain his ſyſtem; as an example of which perſeverance, you declare to us broadly, as a general poſition, that "To aſſert then, "that an act, to which the conſent of three "parties is neceſſary, is the act of only one of "them (eſpecially if the other two are the pro-"moters and framers of the buſineſs in hand) "ſeems as monſtrous a propoſition as to affirm,

" that a triangle conſiſts of a ſingle line, or " that a part is equal to the whole." (*ſect.* 10.) It would have been more diſcreet not to lay down ſo general a poſition as this; for many inſtances may be ſuppoſed, and ſome may be found, where there actually exiſts this diſtinction between concurring parties. Cannot you imagine that Truſts may be ſo formed, as that parties who have no intereſt, and therefore cannot be grantors, may yet be abſolutely neceſſary to aſſent to any deed of conveyance? did you never hear of Courts, that conſiſted of a Judge, and Aſſeſſors, where the Judge was the real *Curia*, though unable to act without the aſſeſſors by his ſide? Do not you know, that the whole of the King's government, out of parliament, is carried on in the ſame method of aſſent?

For example, Orders of the King in Council, which, more than any other acts of State, reſemble acts of Parliament, are expreſſed to be made. *by and with the advice of the Privy Council.* The King, by the Conſtitution, can no more make an order in Council, without the advice of his Privy Council, than an act of parliament, without the advice and conſent of his Great Council, the Parliament. I know not why

" aſſent"

" aſſent " was not ſpecified in Orders of Council, as well as in acts of Parliament, except that it was wiſely thought, that advice included in it, and implied aſſent; the perſon who adviſes, does ſomething more active than the mere Aſſentor; ſo that advice always means aſſent, and ſomething more. Nobody ever thought, as you contend, that theſe Aſſentors, (who, too, are the framers and promoters of the buſineſs) were the perſons ordering and directing; but the King only, whose will and pleasure muſt finally be ſignified. There are indeed special cases where the Lords of the Council act without the King; but this is where they have a delegated authority, and such particular cases, like other exceptions, go to prove the general rule. In short, the Council, and the Houses of Parliament are, as you call it, the framers and promoters of their respective businesses for the King's approbation.

Not only in Council, but in all the functions of the executive government, where the King ordains, or directs, or in any way signifies his Royal will and pleasure, there is the concurrence of the officer, in whose department it lies to carry it into execution; signified,

either by his countersigning in writing, or by a seal, or in some other way; these are testimonies of advice and assent; they are absolutely necessary before the instrument is valid; such advice, or concurrence of the King's great Officers is as indispensable (according to my notion of the Constitution) as the assent of the Lords and Commons in Parliament, in order that some one may be responsible, which the King, by the forms of the Constitution, never can be. In fine, the King's business in Parliament, and out of Parliament, is conducted by advice and consent, in perfect analogy, the one to the other; and if you would not, any more than myself, concede, that the great Officers of State are the enacting authority, in these matters, out of Parliament; no more can I concede to you, that the Lords and Commons are any other than assentors in Parliament.

After what I have thus mentioned shortly, you will not, I hope, think it quite "so monstrous a proposition" to say, that of three concurring parties, the thing done may be the act of one only, with the assent of the other two.

After

After theſe conſiderations from principle, and analogy, your reader, I believe, will not much regard a mere aſſertion from you, that aſſenting and enacting are the ſame; nor will he conſtrue in the ſame ſenſe, that you do, the phraſes you cite to prove your aſſertion. Inſtead of *their* controuling his principles, and analogy, he will, you may be ſure, apply his principles, and analogy, to controul your citations; and in that manner, he will make ſome ſort of ſenſe of them, which you do not. Thus, what you adduce in *ſect.* 18, from Jones's Reports, "by aſſent, is by authority" he will ſuppoſe means, by the authority to aſſent; for what other authority can "aſſent" mean? I say this, without ſearching for the context, which is a trouble not worth undergoing, though it ſhould end in convicting you of another mutilation, like that of Hale. At beſt, it can be only one of thoſe unmeaning, unconſidered trifles, which you are in the habit of collecting as choice authorities, but which I walk over, without deigning to examine, whether they can be twiſted one way, or the other, as of no value in either caſe; like your paſſage from Hale, with the word "co-ordinate" unhappily ſtuck into it.

You

You ſeem, Sir, a great worſhipper of words; a wiſe man, like you, ought to know, that they are mere counters, and not caſh. I mean ſuch words as yours, that all come from private mints; not thoſe words of eſtabliſhed, form, that bear the ſtamp of public authority, ſuch as I rely, and reaſon upon. Mine is a Coin that leads to truth; it teaches me "to "render unto Cæſar the things, that are Cæſar's;" a good leſſon for you. It is a memento of every thing valuable—"The King" on one ſide, "the Country" on the other;—one the great means, the other the great end of our Government. It is an Epitome in itſelf. None of this can be learnt from the figure, or ſuperſcription of your Manx halfpence; which too, like your citations, are all baſe metal.

So widely do you and I differ about words, that, while you reſt your argument on the ſenſe of the term "aſſent," and try ſuch experiments, to force your own meaning upon it, I am inclined to conſider it as mere ſurpluſage, and without any preciſe meaning at all.

What you say (in *Sect.* 11) upon the ancient manner of making ſtatutes, I pass over, and come to another very ſingular point made by

by you in Sect. 12. You mistake when you say that I reckon the expression of " his (the King's) Parliament," among the ancient forms; this is surely, among modern forms, if any thing is, as is known to the readers of newspapers, during every session of Parliament. But your manner of explaining away the inference from this form of expression, is quite as curious as the general proposition I have just disposed of; here it is in the words and syllables following. " But who before the letter writer ever drew such a deduction " from it? *His*, or *my*, applied to a body " aggregate, means that body, of which the " individual is a member, as my college, my " society, or Inn of Court. It may have a " more dignified sense, when the Sovereign " speaks of the Parliament, as of that body " of which he is the August Chief; but not " his, to do what he pleases with it; not in " the way of Proprietorship, or controul."

It may have, you allow, a more dignified sense, when spoken by the "August Chief" of some aggregate body, as suppose, by the head of Maudlin College, or by the Treasurer of the Middle Temple! This is limited Monarchy with a vengeance! and after you have

have gone such extreme lengths for the support of it, I do not wonder, you assume so much merit, as you seem to do in *Sect.* 19.

But, Sir, in the name of the Law of the land, and of common sense, what is the notion, you entertain of Monarchy, if you suppose every thing that is called the King's, he may "do what he pleases with, in the way of proprietorship or controul?" The Courts in which you are a practiſer, are surely, the King's Courts, and yet you know, he has no controul there beyond the rules of Law; the Navy and Army are the King's, and yet, you know, he has no proprietorship in them beyond commanding them for public service: Why then should not the Parliament be his, altho' he cannot "do what he pleases with it," nor hold it either in "proprietorship," or under "controul?" I should have expected from you, Sir, reasoning of another sort than this; something juridical, something rooted in the first principles of Law, and of Policy; but this, surely, is very humble talk; and humble, indeed, should be the place, to which a man must migrate, before he can find a fit audience for it: And yet ſuch reasoning ought to be sincere; for no one

one could be weak enough to believe, it would impose upon others, unless he had been weak enough, to let it impose first upon himself. To such a reasoner I should, in answer, and by way of friendly instruction, give a brief sketch of Monarchy; explaining to him, that under a Monarchy, all power, civil and military, is, by the Constitution, placed in the King, from whom it is afterwards derived to subordinate officers to be exercised in his name; hence it follows that every officer, every office, and every function whatsoever, is the King's, to be exercised for our protection and benefit. That, as among the Romans every thing relating to the State belonged to the people, in whom resided The Supreme Power; so in a Monarchy every thing relating to the Constitution was said to belong to the King, in whom the Supreme Power is placed; not to be holden in proprietorship, but to be administered for the good of the people. That this was a mode of Government found conducive, for various reasons, to the happiness of the people, who are all subjects to it; and that it has grown up amongst us by long usage and convention. I should then send him to Lawyers, and Law

books for a further detail;—but whither am I to send you, who have been there already?

You think, that you take off the force of the concluſion, I make from the prayer of the Commons to the King, at the opening of the parliament, for liberty of ſpeech, and the enjoyment of their privileges, by what you tell me, you have ſaid in your Lectures, namely, that "theſe privileges are conſtitutionally *due* to the Commons, and are thus petitioned for, as a mark of reverence to the throne." If you have really laid it down ſo, in your Lectures, you have, in my opinion, put it in a wrong light; for there is no ſuch thing in the Law, whether municipal or public; nor is it fit, in the tranſactions of national aſſemblies, to exhibit ſuch mummery, as aſking for any thing, merely out of reverence; nor is any thing the leſs to be aſked for, becauſe it is due. Things that muſt be aſked for in form, you may depend upon it, cannot be had without ſuch aſking; and however due upon aſking, are not due, nor exerciſable without it. When you can ſhew, that the Commons enjoy ſuch privileges without ſuch prayer, then you will invalidate the concluſion I have made. The topic you reſort to, of their being conſtitutionally due, will

not

not bear you out in the application; Admittance is conſtitutionally and legally due by the Lord to a Copyholder, and therefore his title may be ſaid to be as good, as that of a freeholder; but yet his tenure is not the leſs a baſe one, nor his being obliged to pray admittance, leſs a mark of it.

I do not agree with you, that, I have uſed any "argument for depreciating the Lords, "and Commons," (*ſect.* 14.) though you have uſed many, ſuch as they are, to depreciate the King. You ſay, he is only co-ordinate with his ſubjects in legiſlation, which ſeems to me ſo groſs a conception, that a man habituated to ſound reaſoning and fair analogy would, I ſhould think, be rather diſpoſed to reſiſt a really good argument, than readily admit ſuch a concluſion from it: but you have already ſwallowed the concluſion, and take your chance for ſupporting it afterwards, as you can. In this ſection, you, indeed, think, you have "the "moſt manly and ſatisfactory argument" of all; and what is this? why, ſomething ſtill more general, obſcure, and remote, than all the looſe equivoques you had before given us from Law-books; it is; "that both Lords and "Commons are the repreſentative ſucceſſors of

"that ſupreme *Commune Concilium*, which has "exiſted immemorially, in this free Country, "*De minoribus rebus principes conſultant, de majo-* "*ribus omnes.*" How this is a manly, and ſatisfactory argument, or any argument at all, for the alledged purpoſe, of raiſing the Lords and Commons to a co-ordination with the King, I cannot divine; for I never yet heard it pretended, that the members of the antient *Commune Concilium regni* affected, or were allowed a co-ordination with the King; and as to the legiſlative functions of our anceſtors in Germany, let us ſay no more about them.

You triumph, and you are welcome, in the diſcovery you have made of my miſtake about Lord Clarendon; It is true, as you ſay; his cenſure was upon the term "three Eſtates" reckoning the King as one; and not upon the like abuſe of the "three branches" of the legiſlature; I perceive how it was, that I confounded the two, but no matter My ſtatement however, was not, with your leave, "manifoldly erroneous," and I do not feel myſelf by this correction of yours ſtripped of Lord Clarendon's authority, as to the queſtion of "making or enacting Laws," as you ſuppoſe; for I had not adduced it, for ſuch purpoſe

poſe, nor do I at all ſee, that if it had ſuited that purpoſe, (which you ſeem to imply by what you ſay, though I do not ſee how) when his cenſure was paſſed on the "three branches," it would not equally ſerve, when his cenſure was upon the term "three Eſtates".

I am ſorry to find a declaration in ſect. 17. that ſtartles me more, than any thing, that has gone before; I have already complained of the ſuppreſſion of two paſſages in the Attorney-General's ſpeech; but you have reſolved not to let that paſs, as ſuppreſſions ought to do, *ſub silentio*; you now provoke enquiry by declaring poſitively, there is nothing in the Attorney-General's ſpeech, that makes againſt you; Your words are theſe. "I really do not find any "thing in the authorities amaſſed from Lord "Coke, Lord Hale, Sir M. Foſter, or THE "LATE ATTORNEY GENERAL, that makes "againſt my argument." I ſhall forbear, as I have hitherto done, to adduce here what is in the letter alledged at length from Hale, and Coke; it will be ſufficient to recollect the two paſſages already cited from the Attorney General's ſpeech. If thoſe are, in your judgment, not againſt you, I readily confeſs, all I have now been writing, is thrown away upon you.

To

To reject ſuch ample and plain authority as the Attorney General, and follow this up, as you do in the ſame ſection, with one of your dismembered passages from Hale, that is worth nothing, as I shall presently shew, is the character of your whole argument, which indeed is in uniſon with your design; for as this is to extol what is inferior, to the prejudice of what is above it, so the other is made up from the rags of authors, whose best commodities are to be seen only on my side.

As to the paſſage from Hale, on which you ſo triumphantly rely for proving the King to be only co-ordinate with his ſubjects in parliament, if you had dealt fairly, and given us the context, your reader would have been able to judge for himſelf; but you, as an advocate, were not, I ſuppoſe, bound to produce what made againſt you. Hale is ſpeaking of the *Jura ſummæ Majeſtatis*, or Rights of the King's Empire, or Dominion;" and amongſt them he reckons the authority to make Laws in this manner; "As to the making Laws, his right conſiſts in Three particulars.

1ſt. "*In the making of Statute Law*, or acts "of parliament, for *tho' the King cannotmake*

"*such*

"*such Laws himſelf without the consent* of both "Houſes, yet no law can be made to bind the "ſubject without him.

2nd. "*In the making of Spiritual Laws*, or "Canons Eccleſiaſtical, which if kept within "the bounds of Eccleſiaſtical Conuſance, are "admitted here in this kingdom; as theſe laws "cannot be made without the King's conſent, "ſo neither can the *King ordain* ſuch laws with-"out the Clergy in Convocation aſſembled.

"So that, in both theſe kinds of Laws, the "King's power of making, is only a qualified, "and *co-ordinate power*.

3d. In making and diſcuſſing of proclamati-"ons, which in ſome inſtances are to be taken "for Laws, as in calling parliaments, declaring "war, &c. herein the King's power is more ab-"ſolute, as being made by him alone, yet the "King cannot by theſe introduce a new Law, "ſo as to alter, or transfer properties, or impoſe "new penalties, or forfeitures, beyond what are "eſtabliſhed by Statutes, or Common Law.

Now I ſubmit to the reader, whether the tenor of this Extract, taken altogether, does not convey

convey very plainly, that the King is *the maker of the Law*; and if it does, we may then ſay, that Hale has been unfortunate, and blameable in letting eſcape him ſuch a word as *co-ordinate*, to raiſe ſcruples in the minds of perſons like you, who pay more regard to words, than to things. To deſcribe at length a power, ſo as to ſhew plainly, that it is ſuperior, and then afterwards to call it co-ordinate, is contradicting himſelf; and his reader ought to ſet him right, by comparing and reconciling him with himſelf, and not quote his miſtakes, in order to miſlead others. Indeed, I think the whole of the above paſſage has marks of negligence not to be ſeen in others of this author's works. To ſay, that tho' the King cannot make Laws without the houſes, they cannot make Laws without him, is ſomewhat puerile; a piece of feeble ſimplicity, that delivers truth, without conveying information. Writers are not always equally vigorous, or careful; the Attorney General, we have ſeen, has made a ſimilar trip, of which you have made a like uſe; We all are liable to write inconſequently ſometimes; and ſome of us write inconſequently, at all times.

But

But after all, what is this looſe paſſage from Hale, compared with other plain and preciſe ones, which I have quoted from him and others, in my Letter, but to which you have not ſaid one word? what is it to this, from Hale, (page 35) "The King comes in upon a higher "denomination and title, namely, *The head* of "theſe three Eſtates." Again, in page 38, "The Legislative Power being lodged in the "King with the aſſent of the two houſes of parliament," to neither of which you ſay one word. What is it to the plain and expreſs definition of Sir Bulſtrode Whitelocke, in page 30. "Sta- "tutes are acts of our parliament; The Laws "made by the King, with the aſſent of his "Lords and Commons in parliament aſſembled. And again, "The making of Statutes is by "the King, with the Aſſent of the Lords and "Commons in Parliament." To neither of which you have ſaid one word. What is it to the Repreſentation of the Houſe of Commons, on King William's refuſing to paſs a bill, where they uſe no higher language than that of complaining, "that their *advice and counſel* was not "taken by the King." To which you have ſaid nothing. Or what is it to Hale's words in page 22. "The King's extraordinary Secular *Councils* "are; The houſe of Peers, the houſe of Com-

"mons; in their Capacities of informing, adviſing, and counſelling the King." And afterwards, he tells us, one of the matters they are to adviſe in, is, "in the making of Statute "Laws." To which you have ſaid nothing. But you ſeem wholly to forget, that the parliament is the King's Great Council of the realm; and how he can be co-ordinate with, and one of his own Council, is too anomalous, and abſurd for me to comprehend. Council is a relative term; A Council muſt belong to ſome one, as to the King, like his Privy Council. Parliament is not a relative term; and thoſe, who, like yourſelf, do not look beyond names, up to principles, conſider it as a ſubſtantive independent power; and having thus, in their own minds, detached it from the Sovereign, falſely imagine, that its office is, to controul the King, inſtead of adviſing him. Hence the erroneous notion of our Government being divided, as it were, into two ſides, the one Legiſlative, the other Executive; the Houſes of Parliament being at the head of one ſide, and the King, of the other; which two diſtinct authorities are connected only by the circumſtance of the King being a party to both. A ſpecies of federal Union, pregnant with jealouſy, and counteraction; in which, upon the whole, the

Executive

Executive Magiſtrate, as they call him, ſeems overſhadowed by the parliament; uſually keeping a ſafe diſtance, but occaſionally veiling his honors, and taking his place by its ſide, like a younger brother, to pronounce a mere aſſent, which ſome ſay, he cannot refuſe; for coming thus laſt, he appears the leaſt, and is familiarly called the Third Eſtate, and Third Branch; the Houſe of Commons, I ſuppoſe (to make the prepoſterous order complete) being reckoned as the firſt. Theſe miſconceptions are countenanced by Blackſtone, and, with the aſſiſtance of you and others, have ſpread ſo far, that it is difficult to get them out of men's minds. No wonder, that perſons prepoſſeſſed with ſuch caricatured imagery, ſhould not comprehend my Tree, and the comment upon it, which were meant to repreſent the parliament as a Council belonging to the King, and originating from him, according to the opinions, language, and practice of all preceding times.

You are ſo delighted with your diſcovery of this favourable paſſage in Hale, that you pleaſantly twit me, in a piece of rhyme, as if I had never read it myſelf. Great wits have much to anſwer for; and ſo I believe, your reader will

will think, now he ſees, how you have impoſed upon him.

I will not add to what I have already ſaid, by repeating the authorities detailed in my Letter, which ſo irrefragably prove my point, that I am utterly unable to account, how a perſon, who had read my pamphlet, ſhould have the courage, or muſt I call it weakneſs, to ſit down and write yours.

You animadvert in Sect. 20. upon a paſſage in my Advertiſement, where I ſpeak of the Parliament among other "ſubordinate "functions placed by law under the authority "of the King" You ſay, "These ſtudied "terms of ſubjection, applied to Parliaments "*eo nomine*, are, I think, objectionable, as "hardly reconcilable to the reſpect, and "affection due to them, or to the King's "having in legiſlation, according to Lord "Hale, only a co-ordinate power." without debating what you exactly mean by "Par-"liaments *eo nomine*" I cannot but admire the tender feelings you have for both houſes of Parliament, and the coolneſs with which you degrade our Sovereign to a level with his ſubjects, upon the authority of an ill con-

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fidered phraſe from Hale in direct opposition to his Majesty's Attorney-General, who, you knew, tho' you endeavour to conceal it from your reader, has alledged the weightiest reasons against such unconstitutional doctrine.

This surely is a little out of the common course of mere juridical disquisition. For myself, if I have any surplus of tenderness to bestow, it will not be upon bodies of men; they can generally take pretty good care of themselves; I shall rather reserve mine for some individual, and above all others, for the King, whose constitutional authority I am now maintaining against your unwarrantable pretensions. I know not how it is, but there are certain persons, and I perceive you are amongst them, who, tho' beyond all comprehension delicate upon one of these points, have no remorse, or shame at all upon the other. You speak, and think, as if you were haunted by a certain Parliament Phobia, which hangs about you like a malady; and such is your infatuation, that you seem to think the members are infected with as much weakness as yourselves. You would make us believe, that the Gentlemen we send

to

to serve in Parliament, instead of being like ourselves, are a coterie of fantastical Old Maids, that startle at every word which sounds like truth, and does not flatter some vain pretension, which you mistakingly ascribe to them. I pray you, Sir, avoid such men, and divest yourself of such fancies; and, if you would shew the Members of the two Houses a substantial and useful regard, let it be, not in such whims as these, but in duly saying the appointed prayer for "The "High Court ot Parliament," and when you come to the words "under our most gracious "King at this time assembled" remember and repent, that these very words when used by me, you censured as "studied terms of subjection" improperly applied to Parliament." You know the common prayer is established by statute, and the language of it must be taken for authentic; "the studied terms of subjection" therefore, which you criticise in me, you will like perhaps, still less, now you see them inflicted upon the Houses of Parliament, by the authority of Parliament itself.

Surely, my dear Sir, this mincing of yours about, what you improvidently call, "terms

"of

"of subjection," applied by me, to the two houſes of parliament, is quite as "ſtudied" as my language; and being wholly founded on miſtake, as I have juſt ſhewn, you are not likely, I ſhould think, to be much thanked for it, either by Lords or Commons. You have told them, they are ſpoken of by Law, in "Terms "of ſubjection," which they before took for terms of honorable diſtinction, and which they are obliged to hear, whether they like them or no. The ſerving of the King is honorable, if any thing is honorable in this Kingdom; the ſerving in parliament is honorable, or it would not be ſo ſought; and the dignity of parliament conſiſts in what it derives from the King; as his Council aſſembled under him. As to "ſubjection," the whole kingdom are "Subjects of the King." and are proud of it. This is the nature of Monarchy, which you, Sir, do not ſeem to underſtand.

After having paid your own devotion to the Lords and Commons, you in *ſect.* 19. take upon you to jeer me for my reverence to the King, as if I aſcribed "the attribute of divinity "to man," becauſe, in pa. 101, after ſhewing that every act, movement, or thing that had to do with the Conſtitution, bore in it ſome mark

of

of the royal authority, actuating the whole, I add theſe words, *Regis ſunt omnia plena.* Now as theſe are the words of a heathen Poet ſpeaking of the heathen divinity Jupiter—*Jovis ſunt omnia plena*—It did not occur to me, that they were under any ſort of conſecration, which forbad the uſe, I have made of them; and I do not allow any irregular laical impoſition of hands, which attempts, as you have done, to confer honor where it is not due, after having taken it away, where it is.

But I wiſh you would be a little more conſiſtent in theſe matters; in the ſame ſection, where you ſneer at me for my ſuppoſed worſhip of the King, you ſay, you had *his Royal Permiſſion to inscribe his* SACRED NAME to your Lectures. His "ſacred name," does not, I think, come ſo well out of your mouth, as it would out of mine; and yet, with all my imputed adoration of Monarchy, there is not, I believe, any ſuch thing, or idea of ſuch thing in any of my writings, that have been ſo ſhamefully misinterpreted. I am aware of the expreſſion in common uſe "his SACRED MAJESTY," to which I give my full aſſent, becauſe I hold him to be "above all perſons, and over "all cauſes eccleſiaſtical and Civil, SUPREME;"

how

how you can conſider him as ſacred, after writing a long argument to prove, that, in parliament, he is only co-ordinate with his ſubjects, I cannot explain, and you ſhould. You will, I ſuppoſe, ſay, that your addreſs to him, was in his "Executive Capacity;" but this is an anomaly, that I cannot digeſt. How any thing that is once ſacred, ſhould be ſubject to such mutations, I cannot reconcile to my underſtanding; but perſons, who have a ſyſtem to maintain, will ſubmit to any thing.

The observation, I have offered on the terms legislative and executive, I ſtill adhere to; nor do I see them invalidated by any thing urged against them in your Sect. 21. I cannot discover in the passage you quote from Hooker, what it is alledged for; and that there were "philosophising politicians" as early as Hale's time, I certainly know. It is true, that my observation is directed against Blackstone's work, which I agree, may be "immortal," but not the more so, for the errors in it; tho' unfortunately, these errors will go down with it, to mislead every succession of Students, unless Mr. Christian, or some other Editor will take my hint of qualifying them by some sound notes. I can-

not refrain from adding, that, notwithstanding what I have been obliged to say, I have always been an admirer, and a defender of Blackstone; and I think his blemishes very few for such a work; the misfortune is that these in question are of great importance.

What you alledge in Sect. 22. from Fortescue of "a joint government" is just as ill conceived, as that of "mixt monarchy," for which you adduce it, as an authority; and I can tell you, I care as little for Fortescue, as I do for Blackstone, or you, or any body, where plain sense and principle are abandoned, and we are to be delivered over to the imaginations of private men.

I see nothing in Sect. 23. 24. 25. 26. 27. that I need give you, or myself any additional trouble about; they are not to the main argument. But I must protest against the way in which you represent me to have brought forward the Oxford decree of 1683, as if I was an admirer of that, which you, with so much seeming satisfaction, tell us was ordered to be burnt by the Lords in 1710. I shall not give myself the trouble to search, what the whole of that decree was, nor what were the circumstances, that led to its being

so

so censured. I mentioned only the sentence therein pronounced, against the notion of the King being one of the three estates; and which you will agree with me, was a just sentence, and deserved no censure at all. I expressed a contempt for such unedifying executions, and I now say the same of this order of the Lords in 1710, mentioned by you; for I think such procedures, of bodies of men exercising deliberative, and not judicial functions, are very unworthy, because they prove nothing, and set no example: and yet it might be too much to engage, that your writings and mine, may not be burnt by the same authority; tho' I think, they will not be executed on the same day.

You ſee Sir, then, that I mentioned with diſapprobation the Oxford Decree in 1683 tho' it was in my favor, becauſe it was, in my judgement, a fooliſh tranſaction; you applaud the vote of the Lords in 1710, becauſe you think, it makes for you. This is quite conſiſtent, and very truly marks the diſtinct Characters of your writing and mine. Whatever has been heedleſly ſaid, or unwiſely done, if at all applicable to your purpoſe, you religiouſly, ſcrape together, and call them authorities; I have given ſeveral inſtances of this ſtrange ſuper-

ſtition; and indeed, my dear Sir, if you go on writing ſo, you will gradually form a ſort of Fool's Paradise, where every thing, that has been loſt, from deſerved neglect, or rejected becauſe it was only fit for condemnation, may be found regiſtered, for the uſe of perſons, who think like you, and reaſon in your faſhion.

I should also apprise you, that your historical fact in Sect. 25, is against you; indeed I had it in my mind, when I wrote what you object to. The vote is, that King James *endeavoured* to "subvert the Constitution," by doing several illegal acts; and you might have learnt from this, that doing illegal acts is not subverting the Constitution; so that as far as your objection at least goes, my position is a true one, "that the "Constitution was never *overturned* or *sus-* "*pended* but by democratical excesses," as in the time of the great Rebellion. Subverting or suspending the Constitution, is very different from breaches of Law, which may happen daily, and no wilful offence committed neither; but a dissolution must be some act, that changes the exercise of the Supreme Power, from the Constitutional functionaries, to others which are not so; and it is worth your considering, whether your

your doctrine, that denies the King the power of making laws, and levels him to a state of co-ordination with his subjects in Parliament, is not a sort of misprision of this great crime. I shall turn your historical fact to another use in my support; for as it shews, that the Constitution was not subverted by James's illegal proceedings, no nor even by his abdication, as appears by the latter part of the vote; it follows, that our Constitution of the present day, is the old one, and not one formed at the Revolution, as some people ignorantly speak of it; such different notions had those who formed the Revolution, from those who, in the present day, talk so much about it. This great event is the idol of idiot worshippers, but to men of sober understandings, it is a lesson of wise policy, never to be forgotten.

I cannot help admiring another instance of the little delicacy with which you depose the sovereign from his supreme Station; and the extreme refinement of it, which you discover, when you chance to graze only, what you call "The rights of the British Legislature." They exhibit an admirable Contrast. Observe the trembling solicitude of the following passage, "I

"hope

"hope not to be miſunderſtood, as quoting "the above paſſages, to prove that the aſſent of "the Lords and Commons is neceſſary to the "enacting of Laws; that were indeed a ſuper-"fluous labor." (*Sect.* 18.) O! Sir, never fear; yours is not the ſide to be miſunderſtood, though it will ſometimes miſunderſtand, as I can witneſs; Surely, the panic muſt have been very ſtrongly upon you, when you penned this. If you do not rouſe yourſelf from this enervating diſeaſe, you will never offer me any thing like an argument, nor have the courage to look one of mine in the face. I recommend you to loſe no delay in altering your regimen. Cure yourſelf; purge your book; and leave the Britiſh Legiſlature, to itſelf; believe me, it needs no ſuch defence as yours either againſt me, or againſt others.

I cannot help noticing, that through your whole pamphlet, you quote from your own Lectures; ſo that it appears, moſt of your falſe poſitions, inconſequent reaſonings, mistaken and miſquoted authorities, have long been in the hands of Students; and no doubt ſome of your ill-taught readers were among thoſe, who clamoured againſt me for my ignorance, forſooth, of the Conſtitution. You might write

ſuch

ſuch pamphlets as your Vindication, and do as little harm among the public, as you do to your Antagoniſt; but it is a very ſerious evil, when the Profeſſor's Chair is infected with Hereſy. This Hereſy deſcended from Blackſtone to you, and you have, to the full, done your part to propagate it. While I make this complaint againſt you, I feel much comfort to reflect, that another Lecturer, who has lately acquired to himſelf great honour, has openly, and expreſsly reprobated your falſe doctrine, in terms; Mr. Mackintosh told his hearers, that there was no co-ordination of the two houſes of parliament with the Sovereign; He declared this very explicitly; I was not informed, how he followed it up, but it ſeems to me, that every other of the truths for which I contend, are included in this admiſſion; and, I collect from the tenor of your pamphlet, that you think ſo too.

This Gentleman has the repute of being a whig; I do not mention it to his honor, but for the honor of the doctrine, which, you ſee, is not denied by them. It is only among whigs run mad, and among perſons diſordered, with a humiliating ſort of falſe Terror, like yours, that

that theſe notions can prevail, after they have once been brought under fair examination.

I have now, Sir, gone through all that appears to me neceſſary to notice in your Brief Vindication; ſome things are purpoſely paſſed over in ſilence, but, I have, I believe, replied on every point, that went to the main argument. I have endeavoured to avoid diffuſeneſs, and the repetition of what may be found at large in my ſecond Letter, to which I beg to refer, for the grounds, reaſonings, and authorities, upon which I proceed. You will allow me to add, that I do not ſee one glimpſe of reaſon, for changing any opinions I have advanced in that letter; on the contrary they ſeem to be confirmed, after what you have ſo vainly attempted to urge againſt them. On my ſide, I find, I have reaſon, and authority; I have principles, and analogy; I have modern practice, and ancient uſage; I have uniformity, ſimplicity, and dignity; ſuch I preſume to ſay, is my ſyſtem of the Engliſh Government. On your ſide, you are defective in every one of the above qualities; and your ſyſtem is accordingly, mixed, anomalous, and unnatural; what ſhould be high, is low; what ſhould be a planet is made a Centre; the movements are diſturbed

diſturbed, and there ſeems a conſtant danger of ſomething retrograde, and impracticable. We are Aſtronomers of different Schools. You place the Earth in the Centre, I place the Sun there; and, I believe, it will be found, that mine is the true Syſtem.

The former of theſe, I cannot help conſidering as a ſort of republican hypotheſis, ſuggeſted by certain ſelfiſh affections, that inclined men fondly to believe the little ſpot on which they ſtood, to be the final cauſe, for which the reſt of the ſyſtem was made, and round which it was to move as a Centre; this they ignorantly concluded, was evidenced by what they ſaw daily; not having ſcience to correct thoſe appearances, which they miſtook for realities, and not poſſeſſing the ſublime Geometry, which was to account for movements, that were beyond the utmoſt reach of their Earthly ſight. Of the ſame ſort, I think, and from a like defect in the mind, are the errors of the Tellurian Politicians, who like you, would take the Sovereign from his Sphere, and make him ſomething like an attendant upon his ſubjects in parliament.

I am for exploding this plebeian ſyſtem, and placing the Sun in the centre; I think, this has been done upon the cleareſt demonſtrations

of political geometry; and, I think, I have exhibited, in due conſequence, and order, all the various phenomena of our Government, which come out plainly, and conſiſtently upon this ſyſtem, but which upon yours are full of incongruity, and contradiction.

Though I ſpeak with ſuch confidence of my own ſyſtem, I have not forgotten, what clamour has been raiſed againſt it. I thought, I ſhould have been permitted to carry on an Inquiry ſo innocent, and inſtructive, as a matter of Science; but unhappily, it was ſoon made an affair of ſtate; The unſcientific Sectariſts, your friends the Tellurians, were preſently up in arms; and my Editor was near ſuffering like the Philoſopher of Florence, for what he, like myſelf, conſidered as a harmleſs ſpeculation. This was a proceeding, ſurely, not worthy of men, who pretend to more liberality, and more regard for liberty than their neighbours; and ill-ſuited to the character of the preſent age, which, I am ready enough to believe an enlightened one, even upon the word of thoſe among my cotemporaries, who are continually telling us ſo, and continually giving evidence to the contrary.

O! the miſplaced zeal of men in all ages! not to diſtinguiſh between a mere ſpeculation, which

which propoſes nothing that is to be acted upon, and the planning of changes, which are directly pointed to the diſturbing of our eſtabliſhments, civil, and religious! The Sun gives his heat, and the Earth produces her fruit in due ſeaſon, whether the Theory of Galileo is right, or wrong; and, fortunately for us all, The Engliſh government goes on in all its operations, uninfluenced either by the reaſonings in my letters, which I conſider as juſt and ſound, or by the miſconceptions of Thoſe, who certainly mean nothing worſe, than merely to miſunderſtand it; an incurable diſorder in thoſe, who have once adopted any ill-founded ſyſtem; more eſpecially in politics, where abſurdity never fails of ſome reward, if on the popular ſide.

With all the prepoſſeſſion in favor of the truths I perſiſt to maintain, I am not ſo blind to what paſſes, and ſo unmindful of what has happened, as not to know, that the majority of perſons, who read, and think they know ſomething, are for your ſyſtem; and, ſo much is it ſuited to those agitations of mind, which go to the compoſition of popular clamour, that you can write in a ſafety and ſatisfaction, which I cannot expect. Indeed, you may look upon yourſelf as a ſort of privileged perſon; believe me, there is no abſurdity, groſſneſs, or incoherence

that you can utter, to inſinuate into people, whether in or out of parliament, that they are upon a footing of co-ordination with their Sovereign, but will be deemed meritorious, and followed with applauſe; while I have found it difficult to obtain a hearing for truth and good ſenſe, (for ſo I will call it) in favor of the intirety of the Supreme Power. You know from experience, that I am more likely to be ſacrificed, than protected even by the King's miniſters, though I am brought in queſtion for defending the King's Crown and dignity, in the lawful exerciſe of Sovereignty. Feeling this diſadvantage, I thought it a little hard in a Lawyer, like you, to endeavour to bring upon me the weight of any thing beyond your own arguments, as you ſeem to attempt, firſt by the catching Title given to your pamphlet, and then by the inſinuations in different parts of it, as to what happened in the late houſe of Commons. I have had enough of popular Clamour, and of the lay gents; and when I had to debate with you, I felt real diſappointment to encounter any thing, except the bare juridical disquiſition, which ſurely is the fitteſt mode of debate in a warfare between you and me.

I thought it alſo a little unfair, and ſavoring ſomewhat of that ſpirit ſo unfavorable to free

diſcuſſion,

diſcuſſion, that you ſhould taunt me with imputations, that have been the hacknied aſperſions upon monarchical men, long before our time; and in the mean while, that you ſhould plume yourſelf, with ſuch complacency, as a friend to limited monarchy, which, forſooth, it is to be underſtood, I am not. Theſe are topics not, properly, for Lawyers; and as they come under the fouleſt head of party crimination, I mean, the imputation of what we know not to be true, I ſubmit, they ought not to have found a place in your pamphlet. Whether I am leſs a friend to limited monarchy, than you are, becauſe I maintain the intire ſupremacy of the King, it is unneceſſary for me to declare in this place; my ſentiments upon that head being fully expreſſed in various parts of my two letters, and more particularly among the 19 Propoſitions at the cloſe of the latter. But certainly my ideas of limited monarchy are not preciſely the ſame with the ſentiments of thoſe, who, under the cover of this ſpecies of merit, (for ſuch they ſeem to think it,) aſſume to themſelves to ſay, and do any thing, unſeemly and inconſequent, which they chuſe to call popular, to the prejudice of the Monarch's perſon and government. The diſorder of the preſent time, that has any violence in it, is for deſtroying Kingly power, merely becauſe ſuch diſordered

dered perſons hate it, they know not why; the diſorder of the time, which has in it only weakneſs and languor, indiſpoſes perſons to a vigorous defence of that, which is vigorouſly attacked; during this ſtate of inaction, the friend to limited Monarchy comes in with his luke-warmneſs; people begin to reaſon themſelves into ſome notion of their own importance, and out of all notion of the King's; he is conſidered only as a ſecondary object in the conſtitution, a circumſtance only, not the ſubſtance; men begin to ſpeculate, whether the Government may not possibly go on without him; and they actually prepare to expect, and, perhaps, to help on ſuch an experiment.

It was in ſuch a criſis of depreſſion and irreſolution, brought on by the above diſorder of the times operating, equally on the wicked and the weak, that I thought it ſeaſonable, and neceſſary, to impreſs on the minds of my Countrymen, a true idea of the value they ought to ſet on the Royal Authority; more eſpecially to point out the miſtake of conſidering the King as a co-ordinate part only, in any light whatever; and to demonſtrate, that he was of the very eſſence of the whole conſtitution, in, from, and by whom we had every thing elſe, that we deemed valuable in it. Such was the

the tenor of my firſt Letter; and that it was properly aimed, was ſoon manifeſted by the event; for both the above claſſes of diſordered perſons, for whoſe cure or caſtigation it was reſpectively intended, united, though in nothing elſe, yet in falling upon me; and ſome who ought to have known better, very nobly joined them, in making me remember what it was to attempt, ſaving people from diſtruction, againſt their wills.

Notwithstanding this ill reception, and notwithstanding I admit, the majority of those, who read, and who think they know something, are against me, I shall, nevertheless, proceed in maintaining my original doctrines, for the original purpose of confirming Englishmen, in the true estimation, they ought to have, of their Monarchy; for upon this, I contend, all the vigor of our Constitution, and all the benefits to be derived from it, depend. I feel encouragement to this purſuit from a confidence, that I think will not, in the end, deceive me. The persons, who think they know something, are certainly a Class, who keep up a great stir in this busy town; and yet they are not the Public, any more than the walkers in Bond Street are the fine World, or a meeting in Palace Yard is the people; There is a

class

class above them, and a class below them, who exceed them in number, as much as they do in consequence and consideration; on the one hand, I mean such persons as are really informed, and think for themselves; and on the other, those who pretend to none of the superfine speculations, that currupt the understanding of many, who make too much noise; these are the persons, who know no theories of the Constitution, but the genuine sentiments of their own hearts; and never look further than "my King and Country" which they know contains in it the essence of the Constitution, and they will never consent to try any speculations, but by that test. Besides these, there is, what shall ever be my stay, and hope, in all perils of our government, *The quiet good sense* of Englishmen, which will, I know, finally bring over to my opinions many even of my opponents.

I derive confidence also, from knowing, that the declared and published sentiments of one among the considerable persons of our Profession, are congenial with mine. You have quoted against me the names of three Lawyers, who were my accusers in the late House of Commons; two of them are out of the way, and one is out of the world; they have done me

me wrong, and they have done themſelves no credit; peace be with them. I am not one, who much regard names, without reaſons; give me reaſons, and they recommend themſelves to my judgement, without any names whatſoever. I have no great opinion of Law, or Lawyers, in a place, where all are their own advocates, and all their own judges; I ſhould have thought better of these gentlemen in a fitter place. What they said, upon that occaſion, and in their own cause, ought not now to be quoted; and my deferring the publication of my second Letter, till I was freed from them, as you express it, ought not to be ſuppoſed. I think you might have spared both these insinuations. But Sir, if you wish Cotemporary authority, I can quote The late Attorney General, so often mentioned in this letter, now LORD ELDEN, Chief Juſtice of the Common Pleas; Whom you, Sir, have so misrepre ſented, (in the same manner as you have Hale and others,) by quoting a short equivocal passage, and forcing upon it a meaning, which is directly contrary to the words, and sense of two long passages, most unequivocal, and express; which paſſages you must have known, but which you, notwithstanding deny to have any existence.* This single fact at once shews the weakness of your Cause, and your own

* Vid. ant. pa. 45.

consciousness of it; and with this I close my reply.

I shall be glad to see any thing, you may have further to say, either upon the subject of my second Letter, or of this; but I strongly recommend to you, if you think so hopeless a cause deserves it, to favor us with something in a better manner, which we all know you possess; and not give me the trouble, and pain of over-ruling another string of equivocal dictums, unmeaning phrases, mutilated passages, and irrelevant authorities. If you could prevail also upon any other Lawyer to follow your example, in entering into this controversy, it might, one way, or another, be some help to the cause of truth.

Humbly asking your pardon, for all the detections, animadversions, refutations, reproofs, and condemnations, I have been obliged to trouble you with, in the course of this little debate, and assuring you, that I meant them as much for your good, as you did your "Brief Vindication," for mine.

I remain, Sir,

Yours.

&c. &c. &c.

Such is the Reply I have made to Mr. Wooddeson's singular attempt to undermine, and discredit those truths, which I had established, in my second Letter, upon the immoveable foundations of principle and authority. If I have preſſed the argument upon him with a spirit of controversy, that looks at all harsh, I beg some allowance may be made for the provocation, and for the very peculiar situation in which myself, and those connected with me, are placed.

When I saw the justice of my cause, and the good intentions of my design run down by clamour, and silenced by prejudice, I had promised myself, that if I could ever obtain a fair hearing for a question, that involved in it some nice considerations of a juridical nature, it must be among Lawyers; whose acquirements, and habits peculiarly fitted them for cool examinations of that sort. Under the hope of this fair hearing, I was at the trouble of going to the bottom of the subject, canvassing it in all points of view, both in principle, and in practice; upon general reasoning, and upon positive authority. The result of this Inquiry was the second Letter just published; in which I had persuaded myself, the

whole of this question was laid open, fairly and fully, the reasons on both sides duly considered, and the conclusions drawn without partiality; and I verily believed, the sum of the whole, as comprised in the 19 Propositions at the close of the Letter, was established upon grounds, that no Lawyer would be willing, or able to dispute.

After all this preparation, and hope, to my great astonishment, the first assailant, who presents himself, is a Lawyer of name, reputation, and experience; and besides this, a writer, and an Academic Lecturer; and this gentleman, with so many titles to something eminent and commanding, instead of taking the vantage ground, which belonged to him, both as a jurisprudent and a scholar, has condescended to tread a path that is walked both by Lawyers, and by Laymen of the lowest form. I am entitled, in this close of my letter, to say thus much, because, I have just been wearying myself with the detection and proof of it, and it is now before you for your judgement. As a Lawyer he has given me only a string of unsystematic quotations, instead of a coherent theory; instead of principles

ciples supported by authorties, he has given me authorities without any principles at all to warrant them, and he has suppressed the evidence of passages, whose force he was unable to combat. As a Scholar, he has spent most of his time in proving, what was not doubted, and little of it in answering to the point in debate; not distinguishing between the predication of quantity, and the predication of quality and relation; preferring a general proposition to a particular one, where the subject more especially required specification; and mistaking exceptions for rules; instead of argument he has dealt out equivocal phrases; and in the place of reasoning to convince, he has insinuated imputations, and endeavored to stir up prejudices known to be alive against his antagonist.

Such disappointment is quite desolating; and I know not now, where to look for a disposition, to hear with calmness, and to decide according to the real force of the argument. Must it be among lawyers, who have written, or who have not written; lawyers who have experience, or who have none at all? I fear, those who have not committed themselves by their writings to maintain

tain an erroneous system, are yet sufficiently pre-occupied by their first studies; and I believe, most of them care little about a point that is never likely (until I am prosecuted again) to raise any interest at Guildhall, or on a paper day at Westminster. I am much afraid that all are, more, or less, corrupted by the first impressions taken from Blackstone, I mean all those who retain what they learnt from Blackstone, on this point, and have added nothing to their first attainments. My only hope, therefore, is now in those, who, little regarding a point of no use to practical men, have suffered every impression of this kind to vanish from their mind; or those, who have corrected these early impressions, by their subsequent better studies; of such I may have some hope; of the Vinerian School, and those whose studies have inured them to that same track, I have little hope at all; of those, who learnt their Law before Blackstone's career, I need say nothing.

I think, it will be allowed for the present, that such resistance and coldness to the force of argument, as has been shewn by Mr. Wooddeson, coupled with the ungrounded imputations, he has endeavored to throw upon

upon me, for maintaining truths which he can neither refute or shake, are some little excuse for the marked censure I have here passed upon his performance; recollecting as I must ever, how the name, the honor, and the safety of a well meaning gentleman have already been hazarded, upon no other consideration than the very insinuations, and the very imputations adopted by Mr. W; and not knowing, whether the same groundless causes may not produce again the same perilous effects.

In a moment of clamour, there will be no stopping to reason, or distinguish; it will be in vain to demand then, as I may at this moment.—Shew me, Mr. W. in what particular my writings are more favorable than yours, to high monarchy, or absolute monarchy, or whatever you please to call it; adone with your tragedies, your fears, and your jealousies, and come to the plain unincumbered point of dispute between us, and it is nothing more than simply this.

The very question may be stated and tried shortly in the following way. I contend that,

of

of the three parties concurring in an Act of Parliament, the King is the maker of it, and the two houses are the advisers; you Mr. W. say, they are all equally the makers; be it so; then I call upon you to shew, what is claimed by me in the first instance for the King, that gives him a whit more real power, than is allowed him by you in the latter instance of legislation.? None at all, you know it. Why then am I to be called less friendly to limited monarchy than yourself? There is no reason; you know it. For the King is equally limited on my Theory, as on yours; the difference is only in the lustre of the station, not in the power of it. The dissention is, that you and I, (like the travellers and the cameleon,) see the same thing in different lights, but the thing itself remains the same. It is then, merely, a moot point, suitable enough perhaps, to be made the subject of legal disquisition, especially by me, and Another, who has, very much against his will, been made a martyr to the truth of my writings. But surely it is not worth while for any one else, to enter into the discussion with great earneſtneſs, much less to deviate from the plain line of fair argumentation,

tion, as Mr. W. certainly has, to obtain what he will find but a transient victory.

As Mr. W. has succeeded so ill in this assault upon me, it would be too much, to recommend him to try a fall with a more able champion; though in so doing, he will equally gratify the class of persons, for whom his performance is more calculated, than for vindicating any rights of the British Legislature. The Original Compact of Mr. Locke, will be a fit counterpart to the Co-ordination of the King; one levels the monarchy, the other levels scripture: what I allude to is this.

So intoxicated were the party with their unexpected success, on obtaining a vote against my first letter, that they resolved to take the House, while it was in that negligent humour, and procure the condemnation of some other good books, that were inimical to their pernicious designs. I am told, but I do not engage for the truth of it, that they had a Committee appointed to carry on this patriotic design; and they actually proceeded some way; but, fortunately, the temper of the time soon recovered its natural tone, and they thought it not prudent to bring into re-

view, and perhaps, discredit, the one victory, they had gained, by aiming at others, that now seemed more doubtful. So that the Freedom of discussion had a breathing from this singular persecution, raised by persons, who pretended to be, and who, in addition to their other whig titles, denominated themselves (O! the speciousness of names!) FRIENDS TO THE FREEDOM OF THE PRESS.

One book brought under the eye of this expurgatory Committee, was "The Reve-"rend Mr. John Whitaker's True Origin of Government," an excellent little Tract, that in a few pages performs to the full the promise of its Title. Another was "The Association Papers," published by the Association at the Crown and Anchor; in which they discovered many new abominations, and quite as dangerous, as those they had before detected in the humorous "Epistle of Thomas Bull to his brother John Bull;" which wicked libel they went and told the House of, and made such a deplorable story, as would have moved stocks and stones, in any house, or in any street. But the Committee did not think it prudent, for the above reasons, to revive their charges against Thomas Bull, nor institute

tute any fresh ones against the rest of the Papers, that were however, quite as deserving of censure,

Having mentioned Mr. Whitaker's Tract, I cannot refrain from saying a word upon it. His method seems to be somewhat akin to my own; I submit to no authority but the text of our Law; he allows none but the text of Scripture; in *his* way, he accounts for the true origin of all government; in mine, I explain the true nature, and form of our own. He says, the Speculation, of man having been once in a state of nature, without Laws, or Institutions, and from that state coming into one of Civil Society, by compact, and general Convention, as supposed by Mr. Locke and others, is not the true origin of Government; and though it might be imagined by the Heathen Philosophers among the Greeks and Romans, for want of better lights, it ought not to be entertained among Christians, who have the Sacred History for their guide. From this divine document it appears, that man was placed on the Earth by the very hand of God, and recieved from his mouth, certain commandments as to his conduct! Those recorded are few, but the opinion is,

that others also were then delivered. It appears that the superintending providence of God did, for many ages "at sundry times, "and in divers manners" vouchsafe to interpose with its commands, and directions for the conduct of human life, not only morally and religiously, but, politically also; more particularly by the precepts given to Noah, and those at Mount Sinai; and it further appears, that, during all the earliest periods, there subsisted kingdoms, and nations in such conditions of order and policy, as evidently shewed, there was no want, neither of "hu-"man Statute" to purge, and keep in vigor the Common Weal. If then, there were ever any bodies of persons in that destitute, and savage state, which speculators imagine, it must have been some unhappy Colonists, or wanderers, who had severed themselves from the parental mass of mankind, and, either by imprudent transplantation of themselves, had lost sight of the primeval tenor of life, or by misconduct, and vicious inclinations, had defaced their original endowments, and so fallen, not into a state of nature, but of degeneracy; which is likely enough to have been the first condition of Greece itself; The Legislators of which appear always

ways to have looked to its parent in the East, for every one of their Institutions.

As far as my memory serves me, (for I have not the book at hand) this is the sum of Mr. Whitaker's Tract; such a theory of Government is, I think, founded in good sense; and the publishing of it, at the time, was doing an essential service to the cause of order and good Government, particularly as it might contribute to bring us back to our Bible, and shew us, what miserable wanderings we make, when we deviate, if it is only in matters of History, from the plain track, there laid down for us.

But these were additional reasons why this able champion should become an object of persecution to those gentlemen, who make their own corrupt wills their sacred text, and their foolish imaginations its only commentary,

Far be it from me to insinuate, that Mr. Wooddeson has any thing in common with such persons, or their designs; He is known to be a religious, as well as learned man, and every way worthy, and good; but, as he has

has made me reponsible for conclusions and inferences, which he has chosen to draw himself, I wish to shew him, that he also is open to retaliation; He has taken up a side which, in theory, has a tendency to Republicanism much more so, than mine has to absolute Monarchy; though I believe, he is no more a republican, than I am a friend to despotism. But such unseasonable concessions give encouragement to those, who know they must first degrade and undermine the Monarchy, before they can be allowed to destroy it; the same people are carping at Scripture, and Religion; and their hostility is aimed both at CHURCH, and STATE; which Mr. Wooddeson wishes, I know, should remain unshaken.

Something from his pen, in support of our establishment, I should be glad to see; it would do him more honor, than this flattering of "the British Legislature," at the expence of the rest of the Kingdom. I do not know how other Englishmen may feel, but my pride does not brook this daring liberty, taken by Mr. W. and persons, who think as he does. For myself, not being among those, who participate in this distinguished co-ordination with

with the King, I do not like to suppose, my Sovereign Lord is capable of being reduced to a level with my fellow subjects, his dutiful and faithful Commons; I am sure, those I helped to seat in that honorable situation, I sent to serve in parliament, as his advisers, and counsellors, not to place themselves by his side on the Throne and if I discover any such unworthy, and unconstitutional assumptions in them, I will not send them to serve again. Let those above us know, and keep their respective stations, and set examples of order, and subordination to be followed by those below them.

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